

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6957 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
Nos. 1 to 5 No

-----  
AYUBKHAN SIKANDARKHAN PATHAN

Versus

COMMISSIONER OF POLICE

-----  
Appearance:

MS DR KACHHAVAH for Petitioner

MS.SIDDHI TALATI, AGP. for Respondent No. 1, 2, 3

-----  
CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 23/12/98

ORAL JUDGEMENT

In this writ petition under Article 226 of the Constitution of India the order of Commissioner of Police, Ahmedabad City dated 19.6.1998 at Annexure "A" passed under section 3(2) of the Prevention of Antisocial Activities Act, 1985 (for short PASA) against the petitioner is under challenge with a prayer that the aforesaid order be quashed and the petitioner be released

from illegal detention forthwith.

From the grounds of detention contained in Annexure "B" it appears that because nine cases were registered against the petitioner under Bombay Prohibition Act and two witnesses in confidence disclosed about bootlegging activity of the petitioner that the petitioner was considered to be a bootlegger. From the aforesaid material the Detaining Authority was further satisfied subjectively that the activities of the petitioner were prejudicial for maintenance of public order. Hence, the impugned order of detention was passed.

This order has been challenged only on one count that the activities of the petitioner cannot be said to be prejudicial for maintenance of public order. It has not been agitated that the subjective satisfaction of the detaining authority that the petitioner is a bootlegger suffers from any vice. From nine cases registered under the Bombay Prohibition Act as well as from the two statements of confidential witnesses it can safely be inferred that the petitioner is bootlegger. However, under section 3(1) of the PASA Act, only such persons can be detained preventively whose activity in any manner is prejudicial for the maintenance of public order. This further flows from section 3(4) of PASA Act and also from explanation to sub-section (4) of section 3 of PASA Act.

No doubt nine cases were registered against the petitioner under Bombay Prohibition Act but there is total lack of disclosure in the grounds of detention that in those nine incidents the petitioner obstructed in search and seizure and created situation prejudicial for maintenance of public order. Large quantities of country made liquor were recovered from the petitioner on those nine occasions but in the absence of allegation that he created a situation prejudicial for maintenance of public order those cases cannot be pressed in service for reaching subjective satisfaction in that direction. Moreover for those nine cases the petitioner was booked under relevant sections of the Bombay Prohibition Act.

So far as the statements of two confidential witnesses are concerned the first witness stated about the incident dated 10.6.1998 which took place at 3.00 p.m. Beating of the witness by the petitioner per se does not amount to creating a situation prejudicial for maintenance of public order. When persons collected at the spot the petitioner was alleged to have rushed towards them with open razor. This also does not create situation prejudicial for maintenance of public order.

The second witness stated about the incident dated 5.6.1998 which took place at 7.00 p.m. Here the witness was beaten on the suspicion by the petitioner that he was police informer. Again similar story has been narrated that on alarm people collected and the petitioner chased them with open razor. This incident is no improvement over the incident narrated by the first witness.

The learned Assistant Government Pleader however placing reliance upon three pronouncements of this Court reported in 1996(3) GLR Pg.823, 1993(1) GCD Pg.554 and 1989(2) GLH Pg.420 contended that from these cases it appears that beating by the petitioner to the witnesses also amounts to disturbance of public order. I have discussed and distinguished these three cases in few other cases recently decided by me. When the Apex Court in the case of M.J.Shaikh Vs. M.M.Mehta, Commissioner of Police, 1995(2) GLR Pg. 1268 did not consider that beating to witnesses by the petitioner and running towards them showing revolver constituted a situation prejudicial for maintenance of public order, it is difficult to accept the contention of the learned Assistant Government Pleader that mere beating of the witness amounts to situation prejudicial for maintenance of public order. Thus, I find that the activities of the petitioner were not prejudicial for maintenance of public order. Even tempo of the life of the locality or community was not disturbed nor peace and tranquillity was disturbed. As such the detention order is illegal.

For the reasons stated above the writ petition succeeds and is hereby allowed. The impugned order of detention dated 19.6.1998, Annexure "A" to the writ petition is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt